

3:14-cv-213

**MOTION ON CONSENT OF THE
PARTIES
TO AMEND CAPTION WITH
RESPECT TO DEFENDANT
ATTORNEY GENERAL ROY COOPER,
TO GRANT ATTORNEY GENERAL
ROY COOPER’S MOTION TO
INTERVENE, AND TO DISMISS
PLAINTIFFS’ FIRST AMENDMENT
CLAIMS**

1. On April 28, 2014, Plaintiffs filed their Complaint. [DE 1]. On June 3, 2014, Plaintiff filed an Amended Complaint. [DE 52].
2. On October 9, 2014, Defendants Roy A. Cooper and the named District Attorneys, (the “State Defendants”), filed their Answer and affirmative defenses-motions to dismiss the Complaint. [DE 104].
3. Among other grounds asserted, Mr. Cooper alleged that the Court lacked jurisdiction, and therefore, the Complaint should be dismissed as to Mr. Cooper. At the same time, Mr. Cooper sought to intervene in this matter, in a representative capacity on behalf of the State of North Carolina, pursuant to Rule 24 of the Federal Rules of Civil Procedure. [DE 104].
4. Additionally, the State Defendants asserted that “[t]he opinion of the Fourth Circuit Court of Appeals in *Bostic v. Schaefer*, No. 14-1167, __ F.3d __, 2014 WL 3702493 (4th Cir. July 28, 2014), *cert. denied sub nom. McQuigg v. Bostic*, __ S.Ct. ____, 2014 WL

4354536 (Oct. 6, 2014), addresses and resolves the 14th amendment issues raised by Plaintiffs in their complaint. That opinion constitutes binding precedent on this Court. As a consequence, and in accordance with *Bostic v. Schaefer*, the legal conclusions of these paragraphs, as they pertain to Plaintiffs' 14th Amendment rights, are admitted. To the extent the allegations of these paragraphs pertain to the Free Exercise and Expressive Association rights of these Plaintiffs pursuant to the 1st Amendment of the United States Constitution, those allegations have been rendered moot by the opinion in *Bostic v. Schaefer*, and therefore are denied.” [DE 104].

5. Counsel to the Plaintiffs, on behalf of their clients, and Mr. Cooper have agreed to amend the caption of this case to remove Mr. Cooper as defendant and add him as an Intervenor on behalf of the State of North Carolina for the presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of the constitutionality of North Carolina’s statutes and constitutional amendment challenged in this action, in furtherance of the Attorney General’s constitutional, statutory and common law duties.
6. No defendant other than Mr. Cooper, nor any ground to dismiss other than Mr. Cooper’s jurisdictional argument in this matter, is impacted by this Motion, and all other grounds to dismiss are preserved.
7. Counsel for Plaintiffs, on behalf of their clients, and Mr. Cooper have further agreed that in light of the binding precedent of *Bostic v. Schaefer*, and its resolution of Plaintiff’s Fourteenth Amendment claims as reflected in the Answer filed by the State Defendants, Plaintiffs’ First Amendment claims should be dismissed at the time judgment is entered on the Fourteenth Amendment claims.

WHEREFORE, Plaintiffs and Mr. Cooper request that the Court enter an Order allowing the caption of the Complaint to reflect that Mr. Cooper appears in this matter for all purposes as an Intervenor rather than as a Defendant, and to grant Mr. Cooper's Motion to Intervene. Plaintiffs and Mr. Cooper further request that the Court enter an Order dismissing Plaintiffs' First Amendment claims at the time judgment is entered on the Fourteenth Amendment claims, and for such other and further relief as the Court deems just and proper.

Respectfully submitted this the 10th day of October 2014.

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of October 2014, I electronically filed the foregoing **CONSENT MOTION** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Olga E. Vysotskaya de Brito
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